IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12743 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GSRTC

Versus

BIPINBHAI G PATEL

Appearance:

1. Special Civil Application No. 12743 of 2000

MR KS JHAVERI for Petitioner No. 1

Mr. Biren A. Vaishnav for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr. K.S. Jhaveri for the petitioner and Mr. B.A. Vaishnav for the respondent. By way of this petition, the petitioner corporation has challenged the award made by the Labour Court, Valsad in

Reference (LCV) NO. 211 of 94 dated 12.10.1999 whereby the labour court concerned has directed the petitioner to reinstate the respondent workman with continuity of service with full back wages for the intervening period while deducting Rs.200.00 for each month. IN this petition, rule has been issued by this court by order dated 15th February, 2001 and interim relief has been granted against the implementation of the award in question. Today, when the matter was taken up for hearing, learned advocate Mr. Vaishnav appearing for the respondent workman has made a statement before this Court that the respondent has been reinstated in service on 11th May, 2001.

Learned advocate Mr. Jhaveri has submitted that the labour court has erred in granting the relief of reinstatement in favour of the respondent who was working as daily wager, with back wages. He has submitted that the off day reliever watchmen are required to be engaged by the corporation on leave vacancy and the respondent was not a permanent employee of the petitioner corporation and he was being engaged on daily wage basis as and when permanent workman working as watchman was proceeding on leave. He has further submitted that the labour court has erred in not appreciating that the respondent has not completed even 240 days continuous service and, thus, the award made by the labour court is contrary to settled law; the labour court has erred in not appreciating that the respondent was not a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947. According to him, the labour court was clearly in error in granting back wages to a person who was being engaged only on the occasion when permanent employee was proceeding on leave and the award of back wages is more than the amount which he would have earned by working on leave vacancy as off day reliever. In view of these facts, he has submitted that the award made by the labour court is required to be set aside.

On the other hand, learned advocate Mr.Biren Vaishnav has submitted that the labour court has rightly appreciated the evidence before it. He has submitted that the respondent was in service from1981 to 1993 and his services were orally terminated in the month of July, 1993. Thereafter, he raised industrial dispute before the Assistant Labour Commissioner which was in turn referred to the labour court for adjudication and he submitted that he continued in service from 1981 to 1993 and has completed 240 days' continuous service and while terminating his service, mandatory provisions of sec. 25-F of the Industrial Disputes Act, 1947 were not

followed by the corporation and, therefore, the labour court has rightly set aside the order of termination and was right in granting reinstatement with continuity of service. As regards back wages, he has submitted that some modification in that regard may be made by this Court.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award in question made by the labour court.It was the case of the respondent that he was with the corporation from 1981 to 1993 at Bilimora and his services were orally terminated by the corporation on 7th July, 1993. Statement of claim was filed by the respondent before the labour court at Exh. 6 and reply thereto was filed by the corporation at Exh. 8 and thereafter, respondent was examined at Exh. 9 and the corporation examined one witness at Exh. 12. Thereafter,the respondent produced the document at Exh. 14 and and thereafter, the corporation also produced document at Exh. 16 and, thereafter, the matter was heard on merits. First of all, the labour court considered the definition under sec. 2(s) of the I.D. Act, 1947 and after considering the nature of work performed by the respondent, the labour court has come to the conclusion that the respondent is a workman as defined under section 2(s) of the I.D. Act, 1947. The labour court has considered the oral evidence of the respondent at Exh. 9 wherein the respondent has deposed that he was getting work of about 25 to 30 days in each month and in one year, he has completed 240 days' continuous service. The labour court has also considered the oral evidence of the witness of the corporation and in cross examination of the respondent, no question has been asked on behalf of the corporation that he has not completed 240 days' continuous service during one year. The labour court was also of the view that the corporation has not produced documentary evidence to rebut the evidence given by the respondent workman. The labour court has appreciated that for rebutting the say of the respondent workman, the corporation has not produced any muster roll and pay register and, therefore, in view of these aspects and also in view of the fact that in the cross examination, no such question has been asked to the workman by the advocate for the corporation that the respondent has not completed 240 days work, the tribunal has come to the conclusion that the respondent has completed 240 days' continuous service during the last year and in view of these findings, the labour court come to the conclusion that the services of the respondent were terminated without following the provisions of section 25F of the

I.D. Act and on that ground, the order of termination was set aside by the labour court. As regards back wages, the labour court has considered the oral evidence of the respondent workman wherein he has deposed that he has not been gainfully employed but he was getting Rs.20.00 per day by doing miscellaneous work. IN view of this evidence of the respondent workman, the labour court was of the view that the respondent has been earning something and, therefore, the labour court while making the award of reinstatement with continuity of service, directed the petitioner to pay back wages while deducting Rs.200.00 p.m. towards such earning per month for the intervening period.

Upon perusal of the award in question, according to my opinion, the findings recorded by the labour court that the provisions of sec.25F have been violated by the corporation while terminating the services of the respondent workman are the findings of facts given by the labour court after appreciating the evidence led before it. Mr. Jhaveri has not been able to point out from the record that such findings of fact recorded by the labour court are contrary to record or that such findings are perverse and, therefore, the award of reinstatement based on such findings does not require any interference of this court in exercise of the powers under Art. 226/227 of the Constitution of India.

The award made by the labour court in respect of back wages is required to be modified by this court. The labour court has not thought it fit to consider the average pay of the respondent workman which was earned by him during the last 12 months preceding the date of termination. According to my opinion, instead of full back wages, the respondent should be given back wages of his average pay on the basis of work which was performed by him during the last 12 months preceding the date of termination and from such monthly amount, amount of Rs.200.00 is required to be deducted as directed by the labour court. According to my opinion, directions issued by the labour court to grant continuity of service does not require any interference of this court and the award in question is required to be modified only in respect of back wages.

Accordingly, this petition is partly allowed.The award in question made by the labour court is modified to the effect that the the respondent is required to be reinstated in service by the corporation with continuity of service with all consequential benefits with effect from 7th July, 1993 and the respondent is also entitled

to back wages of the average pay of last 12 months preceding the date of termination while deducting Rs.200.00 from such average pay every month during the intervening period. Rule is made absolute in terms indicated hereinabove with no order as to costs.

10.4.2002. (H.K. Rathod,J.)

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